



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200846042

AUG 18 2008

Uniform Issue List: 408.03-00

Control Number:

Legend:

Taxpayer	=
Individual A	=
IRA B	=
Financial Institution C	=
Account D	=
Individual E	=
Financial Advisor	=
Amount 1	=
Amount 2	=
Amount 3	=

Dear :

This letter is in response to a request for a letter ruling dated August 10, 2007, as modified and supplemented by a facsimile dated August 7, 2008, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 3 from your individual retirement account (IRA B) maintained with Financial Institution C.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 73 at the time of the distribution of Amount 1 from IRA B, represents that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to mistakes made by an assistant for Financial Advisor, a full service financial service firm.

Taxpayer is the surviving spouse of Individual A, who maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. Taxpayer is the spousal beneficiary of IRA B. Taxpayer represents that Individual A passed away on , 2005. Following the death of her spouse, Financial Advisor representatives furnished Taxpayer with advice concerning IRA B, including the need for her to withdraw Amount 2 to meet her required minimum distribution. An assistant for Financial Advisor was instructed to complete the necessary forms for Taxpayer to receive her initial required minimum distribution (Amount 2). However, instead of preparing a form for the required minimum distribution only, the assistant incorrectly requested that the entire account balance (Amount 1) be transferred from IRA B to Account D, a non-IRA account also with Financial Institution C. Taxpayer signed "Asset Movement Authorization" and "IRA Distribution Request" forms on . Taxpayer did not receive a check. Amount 1 was transferred directly into Account D. The error was discovered when Taxpayer received a Form 1099-R for showing the taxable distribution of Amount 1. Amount 3 remains in Account D and has not been used for any purpose.

Not knowledgeable about the tax laws relating to IRAs, Taxpayer relied on Financial Advisor to ensure her finances were maintained in good order for her benefit. Taxpayer had no reason to question the forms requesting the distribution of the entire account balance in IRA B given the professional expertise of Financial Advisor. Taxpayer only intended to withdraw her required minimum distribution (Amount 2) for the tax year.

Individual E, a principal and part owner of Financial Advisor, submitted an affidavit, dated August 21, 2007, stating that the distribution of Amount 1 was clearly an error on the part of Financial Advisor and the Taxpayer never intended to withdraw the entire balance of IRA B.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amount 3 (Amount 1 minus Amount 2).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3 was caused by mistakes made by an employee of Financial Advisor resulting in Amount 1 being deposited into a non-IRA account.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 3 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, no more than Amount 3 will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____, (Identification Number _____), at _____.

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: